



Neutral Citation Number: [2021] EWHC 3300 (Ch)

Case No: CR-2021-000762

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT (ChD)**

Royal Courts of Justice, Rolls Building,
Fetter Lane, London EC4A 1NL

Monday, 11 October 2021

BEFORE:

THE HON. MR JUSTICE MELLOR

**IN THE MATTER OF ERM WORLDWIDE GROUP LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006**

ANDREW THORNTON QC appeared on behalf of the Company.

APPROVED JUDGMENT

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MR JUSTICE MELLOR:

1. This is an application for sanction of a scheme of arrangement between the scheme company ERM Worldwide Group Ltd and the holders of its nine classes of share capital ("the Scheme Shareholders") pursuant to Section 899 of the Companies Act 2006.
2. The company is a leading provider of environmental health and safety risk and social consulting services to business and government clients. It has 163 offices in 42 countries and the scheme values the company at over \$2.8 billion on an enterprise basis.
3. The purpose of the scheme is to effect an acquisition of the entire issued and to be issued share capital of the company by Nature Bidco Limited ("Bidco" or "the Purchaser"), a private limited company incorporated on 20 April 2021 for the purposes of the scheme. It was incorporated by funds managed by KKR & Co Inc (the "KKR Funds" and "KKR" respectively).
4. KKR is a Delaware corporation listed on the New York Stock Exchange. It is a global investment firm and as at 31 March 2021 had approximately \$367 billion in assets under management.
5. For every scheme share held at the Scheme Record Time and transferred to Bidco under the scheme, a Scheme Shareholder will receive cash consideration as set out in the Schedule to the Scheme, and/or units consisting of one ordinary share and 66 preference shares in Nature Holdco UK Limited ("Nature Holdco" or "the Parent"), a company that forms part of the chain of companies established by KKR for the purposes of the acquisition of the company.
6. Scheme Shareholders were given the opportunity to elect to receive their consideration entirely in cash, entirely in shares or a mixture of cash and shares. The Scheme Shareholders who elect for equity consideration and the KKR Funds will both hold their interest in the company via Nature Holdco/the Parent.
7. The scheme was unanimously recommended by the directors of the company, and the directors set out their detailed reasoning for their recommendation of the scheme in paragraph 2 of the letter from the Chief Executive Officer. No recommendation was made in relation to the choice of consideration offered to Scheme Shareholders.
8. By the order of Insolvency and Companies Court Judge Barber dated 9 June 2021, the company was given permission to convene court meetings of the holders of each of the nine classes of share in its capital. The court meetings took place on 13 July 2021 under the chairmanship of John Mogford. His report shows that resolutions to approve the scheme were passed by the required statutory majority at each of the class meetings. There were no votes cast against the scheme at any of the class meetings.
9. In connection with this application, I have read and considered the following witness statements:

- a. first, the witness statement of Keryn Lee James, the Chief Executive Officer of the company, made in support of the company's application for permission to convene meetings for the purposes of considering the proposed scheme;
 - b. second, the witness statement of John Mogford who chaired all nine of the court meetings and who reports on the voting at each of the nine meetings;
 - c. third, the witness statement of Martin Worsley of Equiniti Limited, Equiniti being the company's registrar; and
 - d. fourth, the witness statement of Michael Gallagher of Black and Callow Limited, the company appointed to provide printing and mailing services to the company in relation to the scheme document.
10. Mr Worsley and Mr Gallagher set out the steps taken by the company to comply with the notice requirements set out in the order of ICC Judge Barber. No shareholder appeared at the hearing today, nor has any person given notice that they wish to object to the scheme.

Legal test

11. In terms of the legal test, the court's approach to the question whether to sanction a scheme of arrangement pursuant to section 899 of the Companies Act 2006 was summarised by Morgan J in *Re TDG plc* [2008] EWHC 2334 (Ch) as involving four principle matters: first, whether the statutory provisions had been complied with; second, whether the class was fairly represented at the meeting or meetings and whether there was any coercion of the minority by the majority; third, whether the scheme is a fair scheme which a member of the class concerned acting in respect of their own interest could reasonably approve; and fourth, whether there is any blot on the scheme, in other words a defect which would make it unlawful or inoperative.

Compliance with statutory provisions

12. In terms of compliance with the statutory provisions, I am entirely satisfied on the basis of the evidence before me that the relevant provisions of the Companies Act have been complied with. First of all, the scheme meetings were convened in accordance with the convening order of ICC Judge Barber which, amongst other things, gave directions as to the dispatch of the scheme document to shareholders and, as I have said, the witness statements of Messrs Worsley and Gallagher set out the steps taken by the company to comply with the notice requirements set out in the convening order.
13. The notices convening the meetings were accompanied by an explanatory statement from the CEO of the company, which explained the effect of the scheme on the shareholders and set out the interests of the directors of the company and the effect on those interests of the arrangement. Today Mr Thornton QC for the company explained to me that, because the scheme was relatively complicated, the scheme document also included a Q&A section to explain the relatively complicated nature of the scheme more clearly.

14. The shareholders' meeting took place on 13 July, with Scheme Shareholders attending either physically or via a conference call facility. The scheme was approved by the requisite majorities of the shareholders, both in number and value. The turnout at each of the court meetings was either 100 per cent in value and number or very close to 100 per cent.
15. I also record that Mr Mogford explained in his witness statement that at each meeting the company proposed a minor technical amendment to part 7 of the agreed sale process in the Scheme Circular, for approval by each meeting. The amendment was to clarify that all shares proposed to be sold under the scheme would be transferred by an instrument or instruments separate from the court Sanction Order. The purpose of the amendment was to avoid delay which might have been caused if Her Majesty's Revenue and Customs had needed to stamp the Sanction Order. But for the amendments, there was a possibility that the court Sanction Order might have been considered to be the stampable instrument of transfer.
16. The shareholders at each meeting were advised that the proposed amendment was not considered material or disadvantageous to any of their interests, and resolutions were duly passed at each meeting approving the amendment.
17. Consequent on that amendment, the company proposes at this hearing a further minor amendment of the Scheme Document which provides that,

"On completion of such forms of transfer as are required, and payment of any UK stamp duty, the company shall make or procure to be made the appropriate entries in its register of members to reflect the transfer of the scheme shares to the parent or the purchaser."

This further amendment seems entirely appropriate and I approve it.

Fair representation of the class at the meeting

18. In terms of fair representation of each class at each meeting, I am entirely satisfied that each of the classes was fairly represented at the relevant meeting. The turnout at each meeting was very high, as I have just indicated, and there is no evidence that the shareholders that voted in favour were acting other than *bona fide*.

Whether the Scheme is a fair scheme which a member of the class might reasonably approve

19. I consider the scheme is a fair one which a member of the class might reasonably approve. First of all, it was unanimously recommended by the directors of the company. Second, it was fully and properly explained to the shareholders in a letter from the Chief Executive Officer of the company and in accompanying explanatory statement, and it was unanimously approved at the various shareholders meetings.

Whether there is any blot/defect in the Scheme

20. I have not, on the evidence before me, identified any matter that would render the scheme unlawful or inoperative such as to represent a blot or defect in the scheme. In terms of other matters, Mr Thornton has drawn my attention to the irrevocable undertakings provided by the directors of the company and other Scheme Shareholders. The givers of those undertakings did not receive any additional consideration for doing so. I therefore do not consider that this gives rise to any concerns as to the discretion to sanction the scheme.

Other matters

21. Mr Thornton has also confirmed on instructions there are no outstanding conditions, save for those which are subject to the court's approval. Mr Thornton is authorised to give undertakings by Nature Bidco, Nature Midco and the Parent to consent and submit to be bound by the scheme of arrangement, which I will sanction.

Conclusion

22. In conclusion, on the basis of the matters I have just set out, I consider it is appropriate to sanction this scheme, and I so order.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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